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RECEIVED

OCT 15 2012

PUBLIC SERVICE COMMISSION

DALE W. MOENCH – *Of Counsel*

October 12, 2012

ND Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

RE: In re: City of Oxbow vs. North Dakota Public Service Commission
Court File No:


Greetings:

Enclosed and hereby served upon you, please find the following:

1. Notice of Motion and Motion for Stay of Public Service Commission Order
2. Notice of Appeal and Specifications of Error
3. Affidavit of Paul Reinke in Support of Motion for Stay of Public Service Commission Order
4. Brief in Support of Motion for Stay of Public Service Commission Order

if you have any questions, please feel free to contact me at the office.

Sincerely,


Ronald K. Hettich

RKH/sav
Enc.

123 PU-07-759 Filed: 10/15/2012 Pages: 15
APPEAL - Notice of Motion & Motion for Stay, Notice
of Appeal, Affidavit of Paul Reinke, Brief

Aaland Law Office, Ltd.

Ronald Hettich

IN DISTRICT COURT, COUNTY OF CASS, STATE OF NORTH DAKOTA

IN THE MATTER OF:

City of Oxbow, Lonni Hayden, Warren Hayden,)
Kent Buhr, Danise Buhr, Jon Hager, Marcy)
Hager, Matt Quibell, Craig Jungberg, Colette)
Jungberg, Todd Miller, Nancy Miller, Vernon)
Skarie, June Skarie, Callie Schlieman, Brian)
Nettestad, Jayme Nettestad, Gregg)
Christensen, Cindy Christensen, Teri Lingen,)
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Nipstad, Doug Lingen, Brenda Carlson,)
Michael Bice, Roger Kotchian, Ryan Binek,)
Elroy Bakke, Ina Bakke, Raymond Grimen,)
Debra L. Larson, Noreen Granlund, Curt)
Bjertness, Gary Cossette)

Appellants)

v.)

North Dakota Public Service Commission)

Appellee.)

NOTICE OF MOTION
AND MOTION FOR STAY
OF PUBLIC SERVICE
COMMISSION ORDER

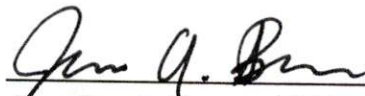
PLEASE TAKE NOTICE that the enclosed motion will be heard as soon as counsel can be heard at the Cass County Courthouse, 211 9 St. S., Fargo, ND, 58103. Appellants will schedule a hearing and provide notice of the hearing.

COMES NOW, the Appellants, by and through their attorneys, Jennifer A. Braun and Ronald K. Hettich, pursuant to Rule 62 of the North Dakota Rules of Civil Procedure and pursuant to Rule 8 of the North Dakota Rules of Appellate Procedure hereby moves the Court to stay the Order of the Public Service Commission dated September 12, 2012.

1. **Stay of Order.** Appellants hereby move the Court to stay the Order of the Public Service Commission.
2. **Waiver of Cost Bond.** Appellants hereby ask the Court to waive the cost bond requirement.
3. **Hearing.** Appellants are hereby requesting a hearing, and will secure a date and time.
4. **Other.** For such other and further relief as the Court may deem just.

Dated this 12 day of October, 2012.

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Ronald K. Hettich, ND ID# 06035

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Appellants)

v.)

North Dakota Public Service Commission)

Appellee.)

NOTICE OF APPEAL
AND SPECIFICATIONS
OF ERROR

COMES NOW, the Appellants, by and through their attorneys, Jennifer A. Braun, and Ronald K. Hettich, and appeal to the District Court for review of the Findings of Fact, Conclusions of Law and Order of the Public Service Commission granting permission to Northern States Power Company (hereinafter "NSP") to construct the 345 kV Transmission Line.

Specifications of Error:

1. The evidence presented at the Administrative Hearing was insufficient to warrant the conclusion and order granting authority to NSP to construct the 345 kV Transmission Line.
2. There was no evidence presented regarding the best location crossing from Minnesota into North Dakota, or why the current proposed crossing point was chosen. The proposed river crossing is not in the best interest of the citizens of North Dakota.
3. There is no evidence in the record to suggest that this is the most efficient use of resources. In theory, a shorter transmission line or path would be more appropriate and cost effective.
4. There is no evidence that supports the new preferred route is any less expensive or more efficient than the original proposed route.
5. There has been no evidence presented that shows significant adverse impacts that will result from the location, construction, and maintenance of the current proposed corridor will be at an acceptable minimum or managed at an acceptable minimum. The evidence presented regarding the adverse impacts was not considered.
6. There is no evidence to support the finding of a corridor width of three miles.
7. The PSC erred in relying on NSP's Class III Pedestrian Survey. The problem with the survey is that it was centered on a proposed route where access was already granted by landowners. It does not address the concerns voiced by the landowners who did not grant access.
8. The evidence does not support the finding that no local, state, or federal agency objected to the current placement. The City of Fargo objected to the original preferred route because it interfered with the proposed Diversion Project and potential future expansion for the City of Fargo.
9. The Findings failed to consider evidence from other residents who presented evidence and testimony about how the transmission lines would affect them and their property.

10. Because NSP failed to allow for a public meeting in the Oxbow area, none of those residents were able to participate in the information gathering process or to voice their opinions about the transmission line route.
11. The PSC did not consider the evidence presented by the citizens of Pleasant Township. The findings of fact do not support all of the considerations that the PSC should have based its position on, namely: need, reliability, timing, cost, the Red River Diversion Project, and the Minnesota approved route.
12. The only evidence that was considered was what the City of Fargo wanted regarding the proposed Fargo-Moorhead Diversion Project.
13. In relying on the proposed Fargo-Moorhead Diversion Project, the PSC erred because the Diversion is merely a proposal at this stage. There are other routes that both ensure the transmission line placement on the "wet" side of the diversion channel as well as affording the appropriate weight to growing and established communities.
14. The evidence presented by NSP supports that a further north placement of the transmission line would be more efficient and better able to serve the needs of those relying on it for service. The long term consequences will be a burden upon citizens who realize little or no benefit from the transmission lines.
15. The evidence does not support that the proposed route is the shortest transmission line.
16. The Pleasant Township Board of Supervisors was coerced into granting the conditional use permit.
17. The evidence does not support that the proposed location is not the best location for the transmission line. The City of Fargo proposed the transmission line's southern placement to meet the needs of the city and its assumed potential growth, however there is no consideration afforded to the established communities of Oxbow and Hickson.
18. The findings of fact do not support the conclusion of law that the proposed transmission facility will produce minimal adverse effects.
19. Waiving the procedure excluded the residents of Oxbow. There is no finding of fact that supports a lack of objection by a majority of landowners along the proposed route.
20. The findings of fact do not support the conclusion of law that the proposed transmission facility is of such length, design, location, and purpose that it will produce minimal adverse effects.

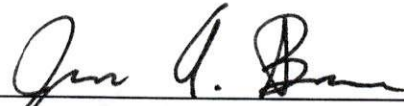
The Findings of Fact are not supported by a preponderance of the evidence, and the Findings of Fact do not sufficiently address the evidence submitted by the Appellant. The Conclusions of Law and Order are not supported by the Findings of Fact.

WHEREFORE, Appellant prays for the following relief:

1. A stay of the Public Service Commission Order dated September 12, 2012.
2. That Appellant requests a hearing on the matter.
3. That the decision of the Public Service Commission and the final Findings of Fact, Conclusions of Law and Order be reversed and the matter be remanded to the Public Service Commission for a rehearing and further proceedings.

Respectfully submitted this 12 day of October, 2012.

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Appellee.)

AFFIDAVIT OF PAUL
REINKE IN SUPPORT OF
MOTION FOR STAY OF
PUBLIC SERVICE
COMMISSION ORDER

STATE OF NORTH DAKOTA)
)
COUNTY OF CASS) SS

Paul Reinke, being first duly sworn, deposes and states to the Court as follows:

1. That I am one of the appellants in the above-entitled action and make this Affidavit in support of the Motion to Stay the Order of the Public Service Commission.

2. The proposed transmission line will cross my property at the North Dakota-Minnesota border.

3. My property will be the first property affected by the transmission line in the State of North Dakota.

4. In order to begin construction on the transmission line, Northern States Power will need to clear cut the trees on my property.

5. I am asking for a stay of the Order while the appeal is pending to avoid destruction to my property.

6. A stay of the Order will not adversely affect Northern States Power or cost them any undue financial burden. However, if the trees are cut down on my property for the construction of the transmission line, it would take years for the trees to grow back that were cut down.

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BRIEF IN SUPPORT OF
MOTION FOR STAY OF
PUBLIC SERVICE
COMMISSION ORDER

TO THE ABOVE-NAMED APPELLEE:

A public hearing was held on January 30, 2012, with the Public Service Commission (hereinafter "PSC"). Evidence and arguments were presented to the PSC at the hearing. Exhibits were offered and received as evidence by the PSC after the hearing was held. The PSC issued an order from the hearing on September 12, 2012. Appellants bring this appeal from that decision.

FACTS

Northern States Power (hereinafter "NSP") is in the process of constructing a 345 kV Transmission Line from St. Cloud, Minnesota to Fargo, North Dakota. The project is well underway in Minnesota and almost to the North Dakota-Minnesota border. Construction of the Transmission Line will have a significant impact on the property where the Transmission Line will sit. Trees that lie within the easement for the corridor will be clear cut to accommodate construction. This will adversely affect the interests of property owners where the Transmission Line will be placed.

The project has not been started in North Dakota; therefore, a Stay will not adversely affect NSP, or have any adverse financial consequences to NSP. However, if construction begins in North Dakota while the appeal is pending, there may be significant financial consequences to NSP if the appeal is granted and the Transmission Line is moved.

LAW AND ARGUMENT

Rule 62(d) of the North Dakota Rules of Civil Procedure states: "If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(1) or (2). The bond may be given on or after filing the notice of

appeal. The stay takes effect when the court approves the bond providing that the appellant will obey the order of the appellate court on appeal." N.D.R.Civ.P. 62(d).

According to the Rules of Appellate Procedure, "A party must ordinarily move first in the district court for the following relief: (A) a stay of the judgment or order of a district court pending appeal. (B) approval of a supersedeas bond. (C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending." N.D.R.App.P. 8(a)(1). This is an appeal taken from the state agency level to the district court level; therefore, the Court has the authority to stay the PSC Order.

In this case, a stay of the PSC Order is appropriate to avoid unnecessary destruction to private property. Moreover, a stay of the PSC Order will not adversely affect NSP. Finally, the Court has the authority under the Rules of Civil Procedure to waive the cost bond.


CONCLUSION

Based on the foregoing, Appellants respectfully request this Court grant the Motion for Stay of the Public Service Commission Order and waive the cost bond.

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Dated this 12 day of October, 2012.

AALAND LAW OFFICE, LTD.



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